IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8232 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH ALIAS JAGO MANJIBHAI DABHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Mr. S.T. Mehta, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. S.R. Patel on behalf of the petitioner and learned A.G.P. Mr. S.T. Mehta for the respondents nos.1,2 and 3.

1. The detention order dated 12-4-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (" PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner-detenu under Section 9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that five Prohibition Cases were registered against the petitioner at Nashabandi Police Station on 28-8-1998, 12-10-1998, 17-11-1998, 3-1-1999 and 24-1-1999. That in each of the cases, countrymade liquor has been seized from the possession of the petitioner. That out of five cases, two cases are pending for trial while the other three cases are pending investigation.

The grounds further indicate that two witnesses on assurance of their anonymity have given statements dated 3-3-1999 and 8-3-1999 in respect to prejudicial activity of the petitioner.

3. That in consideration of the aforesaid material the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activities, and thereby in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds.It has been submitted on behalf of the petitioner at the Bar that last criminal case against the petitioner vide Cr no.81/99 is registered on 24-1-1999 while the impugned order has been passed on 12-4-1999. Thus, there is no nexus of proximity in time between the alleged prejudicial activity and the impugned action taken, and as such, the order is bad in law.

4.1 It is also contended that as per Annexure D, representation dated 30th September, 1999 has been made by the Advocate for the petitioner-detenu to the Home Minister wherein, copy of report of chemical analyzer and other statements of witnesses recorded under Section 161 of the Criminal Procedure Code were claimed. That despite the representation, no report of chemical analyzer has been supplied, and as such, the

petitioner-detenu was prevented from making effective representation whereby mandate under Article 22(5) of the Constitution has been violated rendering the impugned order invalid.

4.2 It is lastly contended that before passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy of opposing and/or claiming cancellation of bail available under Section 437(5) of the Cr.P.C.. Thus, on account of non application of mind also, the subjective satisfaction arrived at by the detaining authority while passing the order of detention stands vitiated and the order of detention is invalid and bad in law.

5. It may be noted that the respondent no.1 has filed affidavit-in-reply dated 18th December, 1999. Mr. S.T. Mehta, learned A.G.P. relying on the affidavit has stated that demand made by the petitioner vide representation dated 30th September, 1999 being vague and non specific in respect to requirement of a statement recorded under Section 161 of the Criminal Procedure Code, the representation was rejected and served to the petitioner-detenu in jail. However, in paragraph 12 of the said affidavit, it has been stated that there is no question of supply of any material to detenu in this regard. Mr. Mehta could not explain the said averment in the context of demand made by the petitioner in respect to report of chemical analyzer vide representation dated 30th September, 1999. It is needless to say that this Court has observed and held that report of chemical analyzer is a vital document and non supply of the same to the detenu amounts to violation of mandate under Article 22(5) of the Constitution which would render the detention order invalid.

6. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS. (AIR 1994 SC 656), the Supreme Court having considered the earlier authority in the case of T.A. ABDUL REHMAN VS. STATE OF KERALA (1989(4) SCC 741) = (AIR 1990 SC 225) has observed that the prejudicial activity of a person necessitating the passing of an order of detention is proximate in time when the order is made or the live link between the prejudicial activity and the date of detention is snapped depends on the facts and circumstances of each case. However, the detaining authority has to satisfactorily examine such delay and afford a tenable reason as to why such a delay has occurred. If no reasonable explanation is forthcoming then such delay is fatal to the validity

of the detention order. The same proposition has been reiterated by this Court in the matter of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381) after considering the various authorities of the Supreme Court.

7. In the instant case, the grounds of detention, nowhere suggests any explanation that though since August, 1998, the prohibition cases were registered against the petitioner and statements of witnesses have referred to incidents of March 1999, why impugned action has been delayed till 12-4-1999. The affidavit-in-reply is also silent in respect to explanation for undue delay in taking the impugned action. Under the circumstances, the impugned order is rendered invalid on account of subjective satisfaction having been vitiated on account of delayed action.

8. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. (1995(2) G.L.R. p.1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5) of the Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court(Coram: C.K. Thakkar & A.L. Dave,JJ.).

9. In the instant case also, the petitioner was released on bail time and again in each of the cases. However, the grounds of detention or contemporaneous record does not disclose any fact whether the detaining authority has considered the aspect of less drastic remedy of opposing and/or claiming cancellation of bail of the petitioner-detenu and on that count also, the impugned order of detention deserves to be struck off.

10. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide, the other contentions raised in the petition.

11. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 12-4-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Jayesh alias Jago Manjibhai Dabhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

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